

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY JUNE 25, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 496

Introduced by Senator Wright

February 21, 2013

An act to amend Sections 905.2 and 19683 of, and to add Section 8547.15 to, the Government Code, and to amend Section 1102.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Wright. Improper governmental activity: disclosure: protection.

(1) The Government Claims Act sets forth the general procedure for the presentation of a claim for money or damages against the state.

This bill would create an exception to the general procedure for a claim alleging a violation of the California Whistleblower Protection Act.

(2) The California Whistleblower Protection Act prohibits acts of reprisal, retaliation, coercion, or similar acts against a state employee or an applicant for state employment who made a protected disclosure relating to an improper governmental activity, as defined. The State Civil Service Act requires the State Personnel Board to initiate a hearing or investigation of a complaint of reprisal or retaliation in violation of the California Whistleblower Protection Act within 10 working days and the executive officer of the board to complete the findings of the hearing or investigation within 60 working days. The State Civil Service

Act authorizes the executive officer to consolidate a case with the same or similar allegations to those contained in an appeal and exempts consolidated cases from the time limits for hearings, investigations, and findings.

~~This bill would modify these requirements to instead require the board to initiate an informal hearing or investigation within 10 working days of submission of a complaint, and the executive officer to complete the findings of the informal hearing within 60 working days, as specified. This bill would authorize the executive officer to consolidate a complaint with a related appeal and exempt the consolidated case from the proscribed time limits. The bill would authorize an aggrieved party to file a petition for writ of mandate for review of the decision, as specified. The bill would deem the complainant to have exhausted his or her administrative remedies and would authorize the complainant to file a civil action for damages after either 70 working days from submitting the complaint to the board or the issuance of findings by the executive officer, whichever is sooner. The bill would provide that the executive officer's findings of the informal hearing or investigation are not binding or entitled to deference in a subsequent State Personnel Board evidentiary hearing or in a civil action for damages. The bill would specify that the filing of a civil action by a complainant does not preclude the request for an evidentiary hearing by a supervisor, manager, employee, or appointing power whom the executive office has found to have retaliated against the complainant nor does the request for an evidentiary hearing preclude the complainant's right to file an independent civil action, as specified. render its decision on the consolidated matter within 6 months of the date of the order of consolidation, as specified.~~ The bill would also make other technical changes.

The act further authorizes the State Auditor to investigate and report whether it finds that a state agency or employee may have engaged or participated in an improper governmental activity. Under the act, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a disclosure that may evidence an improper governmental activity or dangerous condition is subject to, among other things, liability in an action for damages brought against him or her by the injured party. Existing law, the Government Claims Act, sets forth the general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages

against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the state, and against the officers, employees, and servants of those entities.

This bill would establish an exception for an action for damages pursuant to the California Whistleblower Protection Act from the claims presentation requirements of the Government Claims Act.

(3) Existing law prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a state or federal rule or regulation. Existing law prohibits any employer from retaliating against an employee for disclosing information to a government or law enforcement agency pursuant to these provisions or for refusing to participate in an activity that would result in a violation of a state or federal statute or noncompliance with a state or federal rule or regulation. Under existing law, an employer who violates these provisions is guilty of a crime.

This bill would expand these provisions to prohibit an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of or noncompliance with a local rule or regulation. The bill would prohibit an employer from retaliating against an employee because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. The bill would also prohibit an employer from retaliating against an employee for disclosing, or refusing to participate in an activity that would result in, a violation of or noncompliance with a local rule or regulation.

(4) *This bill would incorporate additional changes to Section 1102.5 of the Labor Code proposed by SB 666 and AB 263 that would become operative if this bill and either SB 666 or AB 263, or both, are enacted and this bill is enacted last.*

(4)

(5) Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 905.2 of the Government Code is
2 amended to read:

3 905.2. (a) This section shall apply to claims against the state
4 filed with the California Victim Compensation and Government
5 Claims Board.

6 (b) There shall be presented in accordance with Chapter 1
7 (commencing with Section 900) and Chapter 2 (commencing with
8 Section 910) all claims for money or damages against the state:

9 (1) For which no appropriation has been made or for which no
10 fund is available but the settlement of which has been provided
11 for by statute or constitutional provision.

12 (2) For which the appropriation made or fund designated is
13 exhausted.

14 (3) For money or damages on express contract, or for an injury
15 for which the state is liable.

16 (4) For which settlement is not otherwise provided for by statute
17 or constitutional provision.

18 (c) Claimants shall pay a filing fee of twenty-five dollars (\$25)
19 for filing a claim described in subdivision (b). This fee shall be
20 deposited into the General Fund and may be appropriated in support
21 of the board as reimbursements to Item 1870-001-0001 of Section
22 2.00 of the annual Budget Act.

23 (1) The fee shall not apply to the following persons:

24 (A) Persons who are receiving benefits pursuant to the
25 Supplemental Security Income (SSI) and State Supplemental
26 Payments (SSP) programs (Section 12200 to 12205, inclusive, of
27 the Welfare and Institutions Code), the California Work
28 Opportunity and Responsibility to Kids Act (CalWORKs) program

1 (Chapter 2 (commencing with Section 11200) of Part 3 of Division
2 9 of the Welfare and Institutions Code), the Food Stamp Program
3 (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and
4 Institutions Code.

5 (B) Persons whose monthly income is 125 percent or less of the
6 current monthly poverty line annually established by the Secretary
7 of California Health and Human Services pursuant to the federal
8 Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35),
9 as amended.

10 (C) Persons who are sentenced to imprisonment in a state prison
11 or confined in a county jail, or who are residents in a state
12 institution and, within 90 days prior to the date the claim is filed,
13 have a balance of one hundred dollars (\$100) or less credited to
14 the inmate's or resident's trust account. A certified copy of the
15 statement of the account shall be submitted.

16 (2) Any claimant who requests a fee waiver shall attach to the
17 application a signed affidavit requesting the waiver and verification
18 of benefits or income and any other required financial information
19 in support of the request for the waiver.

20 (3) Notwithstanding any other provision of law, an applicant
21 shall not be entitled to a hearing regarding the denial of a request
22 for a fee waiver.

23 (d) The time for the board to determine the sufficiency,
24 timeliness, or any other aspect of the claim shall begin when any
25 of the following occur:

26 (1) The claim is submitted with the filing fee.

27 (2) The fee waiver is granted.

28 (3) The filing fee is paid to the board upon the board's denial
29 of the fee waiver request, so long as payment is received within
30 10 calendar days of the mailing of the notice of the denial.

31 (e) Upon approval of the claim by the board, the fee shall be
32 reimbursed to the claimant, except that no fee shall be reimbursed
33 if the approved claim was for the payment of an expired warrant.
34 Reimbursement of the filing fee shall be paid by the state entity
35 against which the approved claim was filed. If the claimant was
36 granted a fee waiver pursuant to this section, the amount of the
37 fee shall be paid by the state entity to the board. The reimbursement
38 to the claimant or the payment to the board shall be made at the
39 time the claim is paid by the state entity, or shall be added to the
40 amount appropriated for the claim in an equity claims bill.

(f) The board may assess a surcharge to the state entity against which the approved claim was filed in an amount not to exceed 15 percent of the total approved claim. The board shall not include the refunded filing fee in the surcharge calculation. This surcharge shall be deposited into the General Fund and may be appropriated in support of the board as reimbursements to Item 1870-001-0001 of Section 2.00 of the annual Budget Act.

(1) The surcharge shall not apply to approved claims to reissue expired warrants.

(2) Upon the request of the board in a form prescribed by the Controller, the Controller shall transfer the surcharges and fees from the state entity's appropriation to the appropriation for the support of the board. However, the board shall not request an amount that shall be submitted for legislative approval pursuant to Section 13928.

(g) The filing fee required by subdivision (c) shall apply to all claims filed after June 30, 2004, or the effective date of this statute. The surcharge authorized by subdivision (f) may be calculated and included in claims paid after June 30, 2004, or the effective date of the statute adding this subdivision.

(h) This section shall not apply to claims made for a violation of the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1 of Title 2).

SEC. 2. Section 8547.15 is added to the Government Code, to read:

8547.15. An action for damages pursuant to this article shall not be subject to the claims presentation requirements of the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1).

~~SEC. 3. Section 19683 of the Government Code is amended to read:~~

~~19683. (a) The State Personnel Board shall initiate an informal hearing or investigation of a written complaint of conduct prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the informal hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. If the~~

1 allegations contained in the complaint are related to matters raised
2 in one or more appeals by the complainant to the State Personnel
3 Board, the executive officer may consolidate the complaint and
4 the related appeal or appeals for evidentiary hearing. The time
5 limits described in this subdivision shall not apply to cases that
6 are consolidated by the executive officer.

7 (b) Except for complaints that are consolidated with one or more
8 appeals pursuant to subdivision (a), the complainant is deemed to
9 have exhausted his or her administrative remedies and may file an
10 independent civil action for damages, pursuant to Section 8547.8,
11 after either 70 working days from submitting the complaint to the
12 State Personnel Board, or upon the issuance of findings by the
13 executive officer, whichever is sooner.

14 (c) If, after the informal hearing or investigation, the executive
15 officer finds that the supervisor, manager, employee, or appointing
16 power retaliated against the complainant for engaging in protected
17 whistleblower activities, the supervisor, manager, employee, or
18 appointing power may request an evidentiary hearing before the
19 State Personnel Board regarding the findings of the executive
20 officer. A complainant's filing of a civil action does not preclude
21 the request for an evidentiary hearing by the supervisor, manager,
22 employee, or appointing power under this subdivision, nor does
23 the request for hearing preclude the complainant's right to file an
24 independent civil action pursuant to subdivision (b). The request
25 for hearing and any subsequent determination by the board shall
26 be made in accordance with the board's normal rules governing
27 appeals, hearings, investigations, and disciplinary proceedings.

28 (d) The executive officer's findings of the informal hearing or
29 investigation, as set forth in subdivision (a), are not binding or
30 entitled to deference in either a subsequent State Personnel Board
31 evidentiary hearing or a subsequent or concurrent civil action for
32 damages.

33 (e) After an evidentiary hearing on a complaint pursuant to
34 subdivision (c) the State Personnel Board shall issue a decision.
35 Any aggrieved party to the decision may file a petition for writ of
36 mandate with the superior court for review of the decision pursuant
37 to Section 1094.5 of the Code of Civil Procedure. This subdivision
38 shall not preclude a claimant's right to pursue an independent civil
39 action for damages.

1 (f) If, after the evidentiary hearing, the State Personnel Board
2 determines that a violation of Section 8547.3 occurred, or if no
3 evidentiary hearing is requested and the findings of the executive
4 officer conclude that a violation of Section 8547.3 occurred, the
5 board may order any appropriate relief, including, but not limited
6 to, reinstatement, backpay, restoration of lost service credit,
7 compensatory damages, and the expungement of any adverse
8 records of the state employee or applicant for state employment
9 who was the subject of the alleged acts of misconduct prohibited
10 by Section 8547.3.

11 (g) Whenever the board determines that a manager, supervisor,
12 or employee, who is named a party to the retaliation complaint,
13 has violated Section 8547.3 and that violation constitutes legal
14 cause for discipline under one or more subdivisions of Section
15 19572, it shall impose a just and proper penalty and cause an entry
16 to that effect to be made in the manager's, supervisor's, or
17 employee's official personnel records.

18 (h) Whenever the board determines that a manager, supervisor,
19 or employee, who is not named a party to the retaliation complaint,
20 may have engaged in or participated in any act prohibited by
21 Section 8547.3, the board shall notify the manager's, supervisor's,
22 or employee's appointing power of that fact in writing. Within 60
23 days after receiving the notification, the appointing power shall
24 either serve a notice of adverse action on the manager, supervisor,
25 or employee, or set forth in writing its reasons for not taking
26 adverse action against the manager, supervisor, or employee. The
27 appointing power shall file a copy of the notice of adverse action
28 with the board in accordance with Section 19574. If the appointing
29 power declines to take adverse action against the manager,
30 supervisor, or employee, it shall submit its written reasons for not
31 doing so to the board, which may take adverse action against the
32 manager, supervisor, or employee as provided in Section 19583.5.
33 A manager, supervisor, or employee who is served with a notice
34 of adverse action pursuant to this section may file an appeal with
35 the board in accordance with Section 19575.

36 (i) In order for the Governor and the Legislature to determine
37 the need to continue or modify state personnel procedures as they
38 relate to the investigations of reprisals or retaliation for the
39 disclosure of information by public employees, the State Personnel
40 Board, by June 30 of each year, shall submit a report to the

Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

SEC. 3. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of ~~reprisal or retaliation as~~ conduct prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply. *The board shall render its decision on the consolidated matter within a reasonable time after the conclusion of the hearing or investigation, except that the period shall not exceed six months from the date of the order of consolidation unless extended by the board for a period of not more than 45 additional days from the expiration of the six-month period.*

(b) If the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment

1 who was the subject of the alleged acts of misconduct prohibited
2 by Section 8547.3.

3 (d) Whenever the board determines that a manager, supervisor,
4 or employee, who is named a party to the retaliation complaint,
5 has violated Section 8547.3 and that violation constitutes legal
6 cause for discipline under one or more subdivisions of Section
7 19572, it shall impose a just and proper penalty and cause an entry
8 to that effect to be made in the manager's, supervisor's, or
9 employee's official personnel records.

10 (e) Whenever the board determines that a manager, supervisor,
11 or employee, who is not named a party to the retaliation complaint,
12 may have engaged in or participated in any act prohibited by
13 Section 8547.3, the board shall notify the manager's, supervisor's,
14 or employee's appointing power of that fact in writing. Within 60
15 days after receiving the notification, the appointing power shall
16 either serve a notice of adverse action on the manager, supervisor,
17 or employee, or set forth in writing its reasons for not taking
18 adverse action against the manager, supervisor, or employee. The
19 appointing power shall file a copy of the notice of adverse action
20 with the board in accordance with Section 19574. If the appointing
21 power declines to take adverse action against the manager,
22 supervisor, or employee, it shall submit its written reasons for not
23 doing so to the board, which may take adverse action against the
24 manager, supervisor, or employee as provided in Section 19583.5.
25 A manager, supervisor, or employee who is served with a notice
26 of adverse action pursuant to this section may file an appeal with
27 the board in accordance with Section 19575.

28 (f) In order for the Governor and the Legislature to determine
29 the need to continue or modify state personnel procedures as they
30 relate to the investigations of reprisals or retaliation for the
31 disclosure of information by public employees, the State Personnel
32 Board, by June 30 of each year, shall submit a report to the
33 Governor and the Legislature regarding complaints filed, hearings
34 held, and legal actions taken pursuant to this section.

35 SEC. 4. Section 1102.5 of the Labor Code is amended to read:

36 1102.5. (a) An employer shall not make, adopt, or enforce any
37 rule, regulation, or policy preventing an employee from disclosing
38 information to a government or law enforcement agency, or to a
39 person with authority over the employee or to another employee
40 who has authority to investigate, discover, or correct the violation

1 or noncompliance, if the employee has reasonable cause to believe
2 that the information discloses a violation of state or federal statute,
3 or a violation of or noncompliance with a local, state, or federal
4 rule or regulation, regardless of whether disclosing the information
5 is part of the employee's job duties.

6 (b) An employer shall not retaliate against an employee for
7 disclosing information, or because the employer believes that the
8 employee disclosed or may disclose information, to a government
9 or law enforcement agency, or to a person with authority over the
10 employee or another employee who has the authority to investigate,
11 discover, or correct the violation or noncompliance, if the employee
12 has reasonable cause to believe that the information discloses a
13 violation of state or federal statute, or a violation of or
14 noncompliance with a local, state, or federal rule or regulation,
15 regardless of whether disclosing the information is part of the
16 employee's job duties.

17 (c) An employer shall not retaliate against an employee for
18 refusing to participate in an activity that would result in a violation
19 of state or federal statute, or a violation of or noncompliance with
20 a local, state, or federal rule or regulation.

21 (d) An employer shall not retaliate against an employee for
22 having exercised his or her rights under subdivision (a), (b), or (c)
23 in any former employment.

24 (e) A report made by an employee of a government agency to
25 his or her employer is a disclosure of information to a government
26 or law enforcement agency pursuant to subdivisions (a) and (b).

27 (f) In addition to other penalties, an employer that is a
28 corporation or limited liability company is liable for a civil penalty
29 not exceeding ten thousand dollars (\$10,000) for each violation
30 of this section.

31 (g) This section does not apply to rules, regulations, or policies
32 that implement, or to actions by employers against employees who
33 violate, the confidentiality of the lawyer-client privilege of Article
34 3 (commencing with Section 950), the physician-patient privilege
35 of Article 6 (commencing with Section 990) of Chapter 4 of
36 Division 8 of the Evidence Code, or trade secret information.

37 *SEC. 4.1. Section 1102.5 of the Labor Code is amended to*
38 *read:*

39 1102.5. (a) ~~An employer may~~ *employer, or any person acting*
40 *on behalf of the employer, shall not make, adopt, or enforce any*

1 rule, regulation, or policy preventing an employee from disclosing
2 information to a government or law enforcement agency, ~~where~~
3 *to a person with authority over the employee, or to another*
4 *employee who has authority to investigate, discover, or correct*
5 *the violation or noncompliance, or from providing information to,*
6 *or testifying before, any public body conducting an investigation,*
7 *hearing, or inquiry, if the employee has reasonable cause to believe*
8 *that the information discloses a violation of state or federal statute,*
9 *or a violation of or noncompliance with a*~~state~~ *local, state, or*
10 *federal rule or*~~regulation~~ *regulation, regardless of whether*
11 *disclosing the information is part of the employee's job duties.*

12 (b) ~~An employer may~~ *employer, or any person acting on behalf*
13 *of the employer, shall not retaliate against an employee for*
14 *disclosing*~~information~~ *information, or because the employer*
15 *believes that the employee disclosed or may disclose information,*
16 *to a government or law enforcement agency, ~~where~~ to a person*
17 *with authority over the employee or another employee who has*
18 *the authority to investigate, discover, or correct the violation or*
19 *noncompliance, or for providing information to, or testifying*
20 *before, any public body conducting an investigation, hearing, or*
21 *inquiry, if the employee has reasonable cause to believe that the*
22 *information discloses a violation of state or federal statute, or a*
23 *violation of or noncompliance with a*~~state~~ *local, state, or federal*
24 *rule or*~~regulation~~ *regulation, regardless of whether disclosing the*
25 *information is part of the employee's job duties.*

26 (c) ~~An employer may~~ *employer, or any person acting on behalf*
27 *of the employer, shall not retaliate against an employee for refusing*
28 *to participate in an activity that would result in a violation of state*
29 *or federal statute, or a violation of or noncompliance with a*~~state~~ *local, state, or federal rule or regulation.*

31 (d) ~~An employer may~~ *employer, or any person acting on behalf*
32 *of the employer, shall not retaliate against an employee for having*
33 *exercised his or her rights under subdivision (a), (b), or (c) in any*
34 *former employment.*

35 (e) A report made by an employee of a government agency to
36 his or her employer is a disclosure of information to a government
37 or law enforcement agency pursuant to subdivisions (a) and (b).

38 (f) In addition to other penalties, an employer that is a
39 corporation or limited liability company is liable for a civil penalty

1 not exceeding ten thousand dollars (\$10,000) for each violation
2 of this section.

3 (g) This section does not apply to rules, regulations, or policies
4 ~~which~~ *that* implement, or to actions by employers against
5 employees who violate, the confidentiality of the lawyer-client
6 privilege of Article 3 (commencing with Section ~~950~~; 950) *of, or*
7 the physician-patient privilege of Article 6 (commencing with
8 Section 990) ~~of of~~, Chapter 4 of Division 8 of the Evidence Code,
9 or trade secret information.

10 *SEC. 5. Section 4.1 of this bill incorporates amendments to*
11 *Section 1102.5 of the Labor Code proposed by this bill, Senate*
12 *Bill 666, and Assembly Bill 263. It shall only become operative if*
13 *(1) both this bill and either Senate Bill 666 or Assembly Bill 263*
14 *are enacted and become effective on or before January 1, 2014,*
15 *(2) this bill and either Senate Bill 666 or Assembly Bill 263, or*
16 *both, are enacted to amend Section 1102.5 of the Labor Code, and*
17 *(3) this bill is enacted after Senate Bill 666 or Assembly Bill 263,*
18 *or both, in which case Section 4 of this bill shall not become*
19 *operative.*

20 ~~SEC. 5.~~

21 *SEC. 6.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.